

2007 NOV 30

SECRETARY OF STATE
HWY 64 TITLE LOAN

VS.

Docket No.: 03.06-095907J

Respondent.

After consideration of the record as a whole and the arguments of both parties, it is the determination of this Administrative Judge that the Petitioner should be **DENIED** a

license to lawfully engage in the business of title pledge lending in the state of Tennessee. This determination is based upon the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. TENN. CODE ANN. §§ 45-15-102(1) and (3) state that the policy of this state and the purpose of Title 45, Chapter 15, include ensuring "...a sound system of making title pledge loans through statewide licensing of title pledge lenders..." by the Tennessee Department of Financial Institutions (hereinafter "Department") and providing "...for the examination and regulation of title pledge lenders by the..." Department.

2. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Title Pledge Act (hereinafter "Act"), TENN. CODE ANN. §§ 45-15-101, *et seq.*, and any regulations promulgated pursuant to the Act.

3. The Respondent is the lawfully designated representative through which the Commissioner regulates title pledge lenders and the business of title pledge lending in the state of Tennessee.

4. The Petitioner is a sole proprietorship with a principal office address of 593 Mulberry Avenue, Selmer, Tennessee 38375. The Petitioner is owned and managed by Haynie.

5. The Petitioner filed an application for a title pledge license with the Commissioner on January 20, 2006 (01/20/06). However, the Petitioner's application was incomplete.

6. The Respondent conducted an examination of the Petitioner on or about February 7, 2006 (02/07/06) pursuant to the Act. Following the aforementioned

examination, the Respondent informed the Petitioner that he was violating the Act by operating without a license.

7. The Respondent returned the application referenced in paragraph five (5) to the Petitioner on or about March 7, 2006 (03/07/06).

8. The Petitioner provided the Respondent with a written response concerning the examination referenced in paragraph six (6) on or about April 10, 2006 (04/10/06). However, the Petitioner failed to provide the Respondent with a response concerning the returned application referenced in paragraph seven (7).

9. In a letter dated July 12, 2006 (07/12/06), the Respondent informed the Petitioner that the Respondent did not have a properly completed application from the Petitioner for its consideration.

10. On or about July 31, 2006 (07/31/06), the Respondent initiated an administrative enforcement action by serving the Petitioner, via hand-delivery, with true and correct copies of a "Notice of Opportunity for a Hearing and of the Rights of the Respondent" and a "Verified Petition." The aforementioned administrative enforcement action was based upon allegations that the Petitioner had unlawfully engaged in the business of title pledge lending in the state of Tennessee without a license from the Commissioner.

11. According to the "Notice of Opportunity for a Hearing and of the Rights of the Respondent," the Petitioner was informed of his right to request a contested case hearing before the Commissioner concerning the allegations referenced in the "Verified Petition." Specifically, the Respondent informed the Petitioner that he must deliver a written request for a hearing to the Commissioner within thirty (30) days from the receipt

of the "Notice of Opportunity for a Hearing and of the Rights of the Respondent" if he wanted a contested case hearing. The Petitioner failed to request a contested case hearing concerning the allegations referenced in the "Verified Petition."

12. On or about October 25, 2006 (10/25/06), the Commissioner entered a Final Order concerning the allegations referenced in the "Verified Petition." According to the Final Order, the Commissioner entered a finding that the Petitioner had operated as a title pledge lender in the state of Tennessee without first obtaining a license from the Commissioner. Consequently, the Commissioner ordered the Petitioner to: 1) cease and desist from any further violations of the Act; 2) refund all fees collected in violation of the Act and submit proof of said refunds to the Commissioner within thirty (30) days of the effective date of the Final Order; and 3) pay a civil money penalty of five thousand dollars (\$5,000.00) to the Commissioner within thirty (30) days of the effective date of the Final Order.

13. The Respondent served the Petitioner with a true and correct copy of the Final Order, via hand-delivery, on or about October 27, 2006 (10/27/06).

14. The Petitioner filed another application for a title pledge license with the Commissioner on or about November 26, 2006 (11/26/06). However, once again, the Petitioner's application was incomplete.

15. In a letter dated December 7, 2006 (12/07/06), the Respondent informed the Petitioner that his application was incomplete and provided the Respondent with an accounting concerning the application's deficiencies.

16. The Respondent finally filed a properly completed application for a title pledge license with the Commissioner on or about January 5, 2007 (01/05/07).

17. In a letter dated May 3, 2007 (05/03/07), the Commissioner denied the Petitioner's application for a title pledge license. According to the aforementioned letter, the Commissioner denied the Petitioner's application because the Petitioner failed to satisfy the "character" requirement set forth in TENN. CODE ANN. § 45-15-106(a)(2). The Petitioner failed to satisfy the "character" requirement because the Petitioner had engaged in the business of title pledge lending in the state of Tennessee without a license as evidenced by the Final Order referenced in paragraph twelve (12).

18. The record as a whole demonstrates that the Petitioner has failed to comply with the Final Order referenced in paragraph twelve (12). The Petitioner entered into at least two (2) title pledge agreements after the effective date of the Final Order and after being served with a true and correct copy of the Final Order. Additionally, the Petitioner has yet to submit proof of refunds to the Commissioner as required by the Final Order, let alone within thirty (30) days of the effective date of the Final Order. Finally, the Petitioner has yet to pay the five thousand dollar (\$5,000.00) civil money penalty to the Commissioner, let alone within thirty (30) days of the effective date of the Final Order.

19. The Petitioner has never filed an appeal concerning the Final Order referenced in paragraph twelve (12).

20. Given that the Petitioner has failed to comply with the Final Order referenced in paragraph twelve (12), it is the determination of this Administrative Judge that the Petitioner has failed to satisfy the "character" requirement set forth in TENN. CODE ANN. § 45-15-106(a)(2).

21. Consequently, the Petitioner should be **DENIED** a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

II. CONCLUSIONS OF LAW

22. TENN. CODE ANN. § 45-15-105(a) states that “[n]o person shall engage in the business of title pledge lending without having first obtained a license.”

23. Pursuant to TENN. CODE ANN. § 45-15-106(a)(2), in order to qualify for a license, an applicant must demonstrate to the Commissioner that the applicant possesses the financial responsibility, financial condition, business experience, character, and general fitness sufficient to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

24. TENN. CODE ANN. § 45-15-106(e) states “[u]pon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in this section, the commissioner shall investigate to ascertain whether the qualifications prescribed by this section have been satisfied.”

25. Pursuant to TENN. CODE ANN. § 45-15-106(f), if the Commissioner determines that an applicant is not qualified to receive a license, the Commissioner must notify the applicant in writing that the application has been denied, stating the basis for denial. If the Commissioner denies an application, or if the Commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the Commissioner for a hearing before the Commissioner on the question of whether the license should be granted.

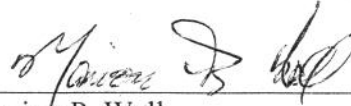
26. Pursuant to TENN. CODE ANN. § 45-15-106(f), in the event the applicant makes a written demand to the Commissioner for a hearing, the hearing must be conducted pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. At the hearing, the burden of proving that the applicant is entitled to a license is on the applicant. A decision of the Commissioner following any hearing on the denial of license is subject to review under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

27. The findings of fact as stated in paragraphs one (1) through twenty-one (21), incorporated by reference as though specifically set forth herein, demonstrate that the Petitioner has failed to prove by a preponderance of the evidence that the Petitioner is entitled to a license under the Act.

28. Therefore, after consideration of the record as a whole and the arguments of both parties, it is the determination of this Administrative Judge that the Petitioner should be **DENIED** a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

IT IS THEREFORE **ORDERED, ADJUDGED AND DECREED** that the Petitioner should be **DENIED** a license to lawfully engage in the business of title pledge lending in the state of Tennessee.

This Initial Order entered and effective this 18TH day of December 2007.



Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division this 18TH day of December

2007.



Thomas G. Stovall, Director
Administrative Procedures Division